

Costs Decision

Hearing held on 5 February 2016

by Tom Cannon BA DIP TP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 June 2016

Costs application in relation to Appeal Ref: APP/L3245/W/15/3137744 Land to the east of Sunnyfields, Withington, Shropshire

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Shropshire Council against Shropshire Homes Ltd.
 - The Hearing was in connection with an appeal against a refusal to grant planning permission for the construction of 17 houses off a new estate road, with associated garages and parking.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The applicant's claim is made on a procedural and substantive basis and focuses on the following matters. Firstly, that the appellant, despite recent evidence that the Council can demonstrate a five year housing land supply (5YHLS) has continued to challenge the Council's position on this matter. Secondly, that the appellant has failed to provide any new evidence to challenge the above findings and, thirdly, its persistence with an appeal which has no reasonable prospect of succeeding.
 4. It is common ground that Inspectors in recent appeal decisions in Shropshire have found that the Council does have a 5YHLS. However, I understand that in those cases the issue of the Council's full objectively assessed housing need (FOAN) was not examined forensically. Therefore, it was entirely reasonable for the appellant to question the Council's approach on this matter as part of this appeal. The basis for doing so, and the reasoning why the appeal should continue to be determined by way of a Hearing, was also clearly set out in a series of emails prior to the event. Discussions at the Hearing enabled the evidence on this issue to be tested in a public forum, with both main parties providing further oral evidence on, amongst other things the FOAN. This would not have been possible had the procedure been changed to written representations as the Council had requested. I conclude, therefore, that the appellant has not acted unreasonably by querying the Council's approach to FOAN, and has provided further written and oral evidence which challenged the Council's position on this matter.
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5. Regardless of the Council's 5YHLS position, the appellant offered some reasoned and objective analysis both in the grounds of appeal and orally at the Hearing as to why, in its opinion, the appeal scheme would accord with both the development plan and the *National Planning Policy Framework* (the Framework) presumption in favour of sustainable development. Although, in my decision to dismiss the appeal, I have found conflict in both respects, it was reasonable for the appellant to argue that, on balance, the proposal would represent sustainable development given the economic, social and environmental benefits associated with the scheme. Therefore, one cannot reasonably conclude that the appeal had no prospect of succeeding. As such, the appellant has not acted unreasonably in this regard.
6. I find, therefore, that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has not been demonstrated. Thus, for the reasons given above, the application for an award of costs does not succeed.

T Cannon

INSPECTOR